

§ 1026.41

(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or

(F) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

(4) For reverse mortgage transactions that are subject to §1026.33, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except:

(i) In the case of default;

(ii) If the consumer transfers title to the property securing the note;

(iii) If the consumer ceases using the property securing the note as the primary dwelling; or

(iv) Upon the consumer's death.

(g) *Refund of fees.* A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (d) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

(h) *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section. If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

§ 1026.41 [Reserved]

§ 1026.42 Valuation independence.

(a) *Scope.* This section applies to any consumer credit transaction secured by the consumer's principal dwelling.

(b) *Definitions.* For purposes of this section:

(1) "Covered person" means a creditor with respect to a covered transaction or a person that provides "settlement services," as defined in 12 U.S.C. 2602(3) and implementing regulations, in connection with a covered transaction.(2) "Covered transaction"

12 CFR Ch. X (1–13 Edition)

means an extension of consumer credit that is or will be secured by the consumer's principal dwelling, as defined in §1026.2(a)(19).

(3) "Valuation" means an estimate of the value of the consumer's principal dwelling in written or electronic form, other than one produced solely by an automated model or system.

(4) "Valuation management functions" means:

(i) Recruiting, selecting, or retaining a person to prepare a valuation;

(ii) Contracting with or employing a person to prepare a valuation;

(iii) Managing or overseeing the process of preparing a valuation, including by providing administrative services such as receiving orders for and receiving a valuation, submitting a completed valuation to creditors and underwriters, collecting fees from creditors and underwriters for services provided in connection with a valuation, and compensating a person that prepares valuations; or

(iv) Reviewing or verifying the work of a person that prepares valuations.

(c) *Valuation of consumer's principal dwelling.* (1) *Coercion.* In connection with a covered transaction, no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.

(i) Examples of actions that violate paragraph (c)(1) include:

(A) Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;

(B) Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;

(C) Implying to a person that prepares valuations that current or future retention of the person depends on the